

**ROBERT A. DOANE**

103 Prospect Street  
Wakefield, MA 01880

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July 17, 2013

**RECEIVED**

**JUL 22 2013**

**OFFICE OF THE REGIONAL ADMINISTRATOR**

**Regional Administrator**

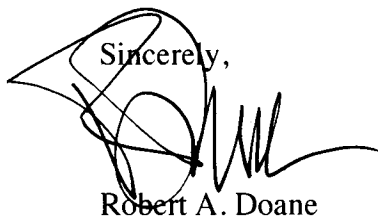
US Environmental Protection Agency  
5 Post Office Square - Suite 100  
Boston, MA 02109-3912

RE: 60 Day Notice of Intent to file "Citizens Suit" for Violations of the Clean Water Act  
Demand to Close Class V Injection Well

Dear Sir or Madam:

As required, enclosed is copy of a 60 Day Notice of Intent to file "Citizens Suit" for Violations of the Clean Water Act – Demand to Close Class V Injection Well. It is my understanding that notice to your office of my intent to file a citizens suit is required..

Sincerely,

A handwritten signature in black ink, appearing to be 'R. Doane', written over the word 'Sincerely,'.

Robert A. Doane

Enc.

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July 17, 2013

***Sent by Certified Mail Return Receipt***

Trustees  
Prospect Hill Manor Condominium Trust  
8 Parker Road  
Wakefield, MA 01880

RE: 60 Day Notice of Intent to file "Citizens Suit" for Violations of the Clean Water Act  
Demand to Close Class V Injection Well

Dear Trustees:

This letter is sent by me as a party in interest ("Plaintiff," party in interest) providing notice of intent to file suit on behalf of the government against the Prospect Hill Manor Condominium Trust and its Trustees (collectively, "Defendants") pursuant to § 505 of the Federal Clean Water Act ("CWA"), 33 U.S.C. § 1365, and serves as a demand to immediately cease use of, properly close and seal the Class V Injection Well located on Defendants' property, and perform all required remedial actions.

Between 2004 and 2005, 8 Parker Road, Wakefield Massachusetts, now the Prospect Hill Manor, underwent construction to refurbish an existing building into a multi-unit condominium complex. As part of that construction, trees were removed, fill was brought in, a retaining wall built, and a large parking lot added.<sup>1</sup> To accommodate the additional runoff from added impervious area, a Storm Drain Management System was built comprising of a catch basin wherefrom storm water is piped to a series of underground injectors, i.e., a "Class V Injection Well," along the northern bound and within a few feet of Plaintiff's property. In late 2006, the Plaintiff complained to Defendants that since the installation of the Storm Drain System at 8 Parker Road, large amounts of water began to enter the basement of the property located at 103 Prospect Street, during and for a period after rain, and expressed the belief that the Storm Drain Management System was responsible. Plaintiff's engineer later determined that "the post-development volume of stormwater directed to the border between the Prospect Hill Manor Condominium and the Doane Property is substantially increased because of 1) the substantial increase in impervious area, 2) the discharge of all collected stormwater to the infiltrators adjacent to this boarder, and 3) the removal of mitigating pervious surface

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<sup>1</sup> The area proposed on the Revised Site Plan by the project sponsor was 5,600 sq. ft., whereas the actual impervious area built was 6,490 sq. ft. This discrepancy violates the conditions imposed by the Comprehensive Permit Decision (Comprehensive Permit Decision p. 3 ¶ 1, 2), and violates the Trust's compliance obligation under the Comprehensive Permit Decision, the Master Deed, and the Regulatory Agreement to which the Town of Wakefield is

area between the Doane Property boundary and the preexisting structure at 8 Parker Road.” More particularly, the engineer states “there has been a 12.5-fold increase in tributary impervious surface draining to the boarder at the Doane Property.” As noted earlier, according to the engineer, the amount of impervious area was underreported and is nearly twenty percent (890 sq. ft.) greater than that shown on the site plan. The engineer also states that “[a]ny failure to maintain the [storm drain management] system leading to the overflow may increase the problem [of flooding to the Plaintiff’s property] due to the point discharge of stormwater at the property line.”

The Defendants have a history of failing to remove snow in excess of four inches (intended to mitigate infiltration of water from rapid snow melt, among other things), as recently as last winter, and have a history of failing to clean the catch basin of the storm drain management system prior to 2007, in violation of the BOA’s conditions. Currently, the Plaintiff has information indicating the storm drain system is now on a biannual cleaning schedule when Defendant’s are fully aware of the requirement to clean at least three times a year. Despite numerous letters and complaints, and while Defendants’ are aware they are operating an illegal injection well, the Defendants have consistently refused to fully comply with condition’s intended to prevent an unplanned amount of water from entering Plaintiff’s property, failed to stop the flow of water into an illegal injection well that has and continues to cause damage to Plaintiff’s property and continues to threaten the health of the occupants and visitors of Plaintiff’s property, and has refused to permit the Plaintiff to enter the Defendant’s property with an engineer in hopes of devising a solution to cure the problem.

The Plaintiff has been advised that the Class V Injection Well on Defendants’ property is subject to specific reporting requirements under the UIC program, requiring submission of a UIC Registration form prior to building the well, or initiating discharge, and is prohibited where the potential exists for pollutants to enter and where the presence of pollutants causes or is likely to cause a violation of any Massachusetts Drinking Water Regulation, or adversely affects, or is likely to adversely affect, the health of persons. The MassDEP indicated they had no record of an injection well located at 8 Parker Road, and if constructed per the site plan without reporting, the Injection Well would be illegal and banned, requiring immediate discontinued use and closure. Indeed, the Plaintiff was advised that the Storm Drain Management System, as shown on the most recent plan submitted to the Town of Wakefield, would not meet the MassDEP Standard Design Requirements, and would not be permitted to operate even if an application for permitting were submitted.

The Safe Drinking Water Act requires that the EPA protect underground sources of drinking water (“USDW”) from injection activities. The EPA has set minimum standards to address the threats posed by all injection wells. Storm water injection is a concern because storm water may contain sediment, nutrients, metals, salts, microorganisms, fertilizers, pesticides, petroleum, and other organic compounds that could harm USDW. The Clean Water Act prohibits the injection and discharge of storm water that is or has the potential of carrying pollutants from a point source to the waters of the United States except pursuant to and in compliance with a National Pollutant

Discharge Elimination System (“NPDES”) permit. It is a violation of the CWA to build or operate a Class V Injection well without first submitting inventory information to the permitting authority. The Massachusetts Department of Environmental Protection (“MassDEP”) is the regulating authority providing standards and limitations under the CWA in Massachusetts.<sup>4</sup> The MassDEP’s Underground Injection Control (“UIC”) Program, has more stringent standards than the CWA, and regulates discharges of fluids having the potential to contaminate groundwater (310 CMR 27.00), and also mandates “Best Management Practices” to which compliance is required for the design and construction of Injection Wells, and provides certain requirements with regards to setback, infiltration, and pollution control, among other things.

On a continuing and ongoing basis, despite Plaintiff’s repeated complaints regarding discharge from Defendants injection well, the Defendants continued to discharge storm water and other pollutants without having followed the requirements mandated by both the CWA and the MassDEP. The Defendants have also failed to properly remove snow in accordance with the ZBA’s conditions, have spread salt and other pollutants in the parking area, and have failed to properly maintain, clean, monitor, or modify the Injection Well in a manner required to prevent polluting groundwater. The Defendants have caused, and continue to cause, the discharge of pollutants into the Plaintiff’s property, and within and into what Plaintiff believes (and the project sponsor appears to admit) is a wetland adjacent to the well, and into waters of the United States, all to the detriment of the general public, including the Plaintiff. While the Defendants were put on notice that the injection well was causing damages to both property and health, the Defendants have failed to take any investigative, preventative, or remedial actions. To date, the Defendants’ Injection Well operates unhindered, on a continuous and ongoing basis, and as a convenient place to dump unwanted materials.<sup>5</sup>

The Plaintiff is concerned with water quality, and proper compliance with regulations of the CWA and the MassDEP. The Defendant’s well continues to pose an unabated threat to the Plaintiff and the general public, and violates the Clean Water Act. As the Plaintiff is located down gradient and immediately adjacent to the Defendant’s property, and the Injection Well is located within a few feet, and along the entire length of Plaintiff’s property line, this notice letter is submitted by Plaintiff in his capacity as a person harmed by the discharges alleged herein, and therefore is a party in interest who has standing to file a Citizens Suit under the CWA on behalf of the government.<sup>6</sup> The

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<sup>4</sup> MassDEP applies more stringent standards pursuant to its authority under the Wetlands Protection Act, M.G.L. c. 131, § 40, and the Massachusetts Clean Waters Act, M.G.L. c. 21, §§ 26-53. The revised Storm Water Management Standards have been incorporated in the Wetlands Protection Act Regulations, 310 CMR 10.05(6)(k) and the Water Quality Certification Regulations, 314 CMR 9.06(6)(a).

<sup>5</sup> On August 26, 2010, after observing several days of construction activities on the roof of the building at the Defendants property, persons were observed, and photographed, dumping materials from activities on the roof of Defendant’s building into the catch basin that leads to the Injection Well.

<sup>6</sup> Under the CWA a private citizen may sue any person alleged to be in violation of the conditions of an effluent standard or limitation under the Act or of an order issued with respect to such a standard or limitation by the Administrator of the Environmental Protection Agency (“EPA”) or any state. *See* 33 U.S.C. § 1365(a)(1).

Plaintiff has been advised that each day of unimpeded discharge comprises a series of separate violations of the CWA. CWA, § 309(d) provides up to a \$25,000 per day fine for each violation. The Plaintiff has been advised that if these discharges are “negligent” or “knowing” violations, those responsible may be subject to criminal penalties and enforcement pursuant to 33 U.S.C. § 1319(c). Given that Defendant’s have been aware the well operates illegally and have thus far failed to discontinue use of the well, the Defendant’s actions appear negligent and knowing.

This letter gives notice of intent to seek redress on behalf of the government under the CWA for: (i) illegal construction of a Class V Injection Well (“Injection Well”),<sup>7</sup> without having submitted inventory information to the UIC<sup>8</sup> regulating authority, i.e., MassDEP and EPA; (ii) failure to comply with UIC program requirements, and for illegal operation of an Injection Well having potential of carrying pollutants to the waters of the United States, without a permit<sup>9</sup>, in violation of federally regulated water quality standards; and (iii) other potential violations of the CWA, and/or the Massachusetts Clean Waters Act, including violations arising from the Defendants’ failure to follow EPA and MassDEP compliance procedures with respect to the building, operating, management, or maintenance of a Class V Injection well, and a failure to monitor, stop, prevent, mitigate or report pollution and/or the potential of pollution from the Class V Injection well.

**WHEREFORE**, the Plaintiff now demands that the Defendant operators of the illegal Injection Well immediately discontinue use of the Well and close it in accordance with the MassDEP UIC regulations, and to prevent harm to its own and abutting properties, build a Storm Drain Management System that is compliant with the CWA and the MassDEP. If the Defendants fail to immediately close the Injection Well in accordance with the procedural regulations mandated by the EPA, and the MassDEP’s UIC program, 310 CMR 27.04 and 27.10, the Plaintiff will be compelled to seek redress on behalf of the government. Such redress may include, among other things, damages and injunctive relief, i.e., temporary restraining order or preliminary injunction, an order to have the Defendants permanently close the Injection Well, and perform remedial activities on surrounding properties.

The Plaintiff believes that this notice of intent to sue sufficiently states grounds for filing suit. The Plaintiff intends, at the close of the 60-day notice period, to file a citizen suit in federal court against the Defendants under Section 505(a) of the CWA for the violations outlined above. In accordance with the procedural notice requirements, a copy of this letter is

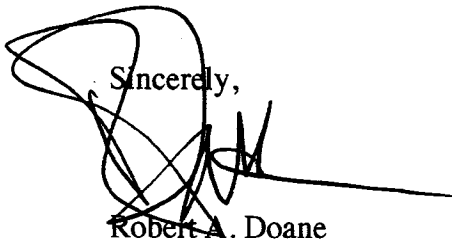
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<sup>7</sup> Under applicable EPA regulations (40 CFR 144.3), a Class V Injection Well (Well Code 5D2) is any drainage well used to receive storm water runoff from paved areas, including parking lots, streets, residential subdivisions, building roofs, highways, etc.

<sup>8</sup> UIC stands for the Underground Injection Control Program. The UIC program is a federal program under the Safe Drinking Water Act (SDWA), which is managed in Massachusetts by MassDEP.

<sup>9</sup> Under the minimum federal requirements, storm water drainage wells are “authorized by rule” (40 CFR 144). This means that storm water drainage wells do not require a permit if **they do not** endanger USDWs **and they comply with** federal UIC program requirements. The prohibition on endangerment means the introduction of any storm water contaminant must not result in a violation of drinking water standards or otherwise endanger human health.

being sent to the parties indicated below. If you wish to comment, or state your intentions to become complaint, please respond in writing within 60 days from the date you receive this letter.

Sincerely,  
  
Robert A. Doane

cc: **Lisa P. Jackson / Administrator**  
US Environmental Protection Agency Headquarters  
Ariel Rios Building  
1200 Pennsylvania Avenue, N. W.  
Mail Code: 1101A  
Washington, DC 20460

**Curt Spalding / Regional Administrator**  
US Environmental Protection Agency  
5 Post Office Square - Suite 100  
Boston, MA 02109-3912

**Laurie Burt / Commissioner**  
MassDEP  
One Winter Street  
Boston, MA 02108

**Kenneth Pelletier**  
MassDEP  
One Winter Street  
Boston, MA 02108